

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)

Annual Assessment of the Status of)
Competition in the Market for the)
Delivery of Video Programming)

MB Docket No. 04-227

**REPLY COMMENTS
OF VERIZON ON THE ELEVENTH NOTICE OF INQUIRY REGARDING
COMPETITION IN THE DELIVERY OF VIDEO PROGRAMMING**

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**REPLY COMMENTS OF VERIZON ON THE ELEVENTH NOTICE OF INQUIRY
REGARDING COMPETITION IN THE DELIVERY OF VIDEO PROGRAMMING¹**

Introduction and Summary

The comments submitted in this docket confirm that the Commission can help ensure greater competition both in the broadband market that cable companies continue to dominate *and* in the cable companies' core video market by establishing a deregulatory national broadband policy and by reforming certain aspects of current video regulation. The record reflects that fiber overbuilders provide increased video competition, with more choices and lower prices for consumers. Verizon has made a major commitment to deploying fiber to the premises ("FTTP"), with plans to pass one million premises in parts of nine states by the end of this year. Incumbent cable companies acknowledge the potential for increased video competition from Verizon and other telephone companies. Comcast, for instance, notes that recent announcements of video initiatives by such companies as Verizon and other telephone companies "compel existing market participants to strive even harder to meet their customers' needs and desires." Comcast Comments at 20; *see also* NCTA Comments at 19-20.

Establishing a deregulatory broadband national policy that applies equally to all providers is essential to successful competition from next-generation infrastructure needed to provide both improved broadband and video offerings. In the short term, the Commission can help remove regulatory barriers to fiber deployment (and hence to increased competition in video offerings) by treating FTTP broadband like cable modem service on an interim basis until the pending rulemaking proceedings have been completed.

¹ The Verizon telephone companies ("Verizon") are the local exchange carriers affiliated with Verizon Communications Inc., which are identified in Attachment A hereto.

As discussed in Verizon's opening comments in this docket, the Commission should encourage the reform of state and local rules to streamline the franchising process and the repeal of so-called "level playing field" statutes that deter entry by video competitors. In addition, the Commission should close the so-called terrestrial loophole in its program access rules, so that competing distributors have access to content. It should also support the use of open technical standards that do not favor any particular technology or industry group. In particular, the use of cable-centric technical standards inhibits the deployment of competitive video offerings via FTTP and satellite systems. These regulatory reforms will create an environment conducive to the deployment of additional broadband *and* video offerings.

Discussion

I. REMOVING FEDERAL REGULATORY IMPEDIMENTS TO THE DEPLOYMENT OF BROADBAND WOULD FACILITATE INCREASED COMPETITION IN VIDEO OFFERINGS

As the Broadband Service Providers Association ("BSPA") correctly notes, companies deploying advanced fiber networks "are leaders in migrating video to all-digital platforms, consistent with the mandates added by the 1996 Act and the Commission's digital television transition." BSPA Comments at 2. None of the comments submitted in this proceeding calls into question the proposition that reforming the regulatory treatment of broadband in general, and broadband provided via FTTP in particular, is critical to the widespread deployment of broadband infrastructure on the most efficient basis, and that such deployment will, in turn, facilitate competitive video offerings. Verizon has outlined the needed reforms in its opening comments (at 3-12) and will not repeat the reasons for them in detail here. Broadly speaking, the Commission should clarify that broadband infrastructure does not have to be offered on an unbundled basis, and it should adopt a comprehensive, deregulatory national broadband policy.

In the meantime, the Commission should grant Verizon's pending petitions for *interim* regulatory relief for broadband provided via FTTP, until the Commission has established an appropriate regulatory framework for all broadband services.

With regard to broadband unbundling obligations, as explained in Verizon's opening comments, two important clarifications are still needed. First, the Commission should grant Verizon's pending petition to forbear from applying any unbundling requirements for broadband that section 271 might be construed to impose, which would have the same harmful effects that the Commission previously found would result through unbundling under section 251.² Second, the Commission should establish a bright-line rule to distinguish between mass-market and enterprise customers for purposes of its broadband unbundling regulations – preferably, defining the mass market to include all customers with 48 or fewer telephone numbers, as proposed by Sure-West³ – so that it is clear which rules apply to which customers. These clarifications of the *Triennial Review Order*⁴ will help remove regulatory barriers to broadband deployment and competition in video services. See Verizon Comments at 4-6.

In addition to clarifying the unbundling rules that will apply to the underlying network, it is critical that the Commission establish a comprehensive, deregulatory policy for the broadband

² Cf. *Verizon Tel. Cos. v. FCC*, No. 03-1396, slip op. at 10 (D.C. Cir. July 13, 2004) (admonishing the Commission to “grant Verizon’s petition for forbearance [from the broadband unbundling requirements of section 271] or to provide a reasoned explanation for denying it”).

³ Petition for Clarification and Partial Reconsideration of SureWest Communications at 7, *Review of the Section 251 Unbundling Obligations for Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338 et al. (FCC filed Oct. 2, 2003).

⁴ Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003) (“*Triennial Review Order*”), *vacated in part and remanded*, *United States Telecom Ass’n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004), *petitions for cert. pending*, Nos. 04-12, 04-15, and 04-18 (U.S. filed June 30, 2004).

services delivered over these networks. In its pending broadband proceedings, therefore, the Commission should make two key decisions with regard to telephone-company broadband that it has already reached for cable modem broadband. *First*, the Commission should clarify that broadband providers are free to offer transmission on a private-carriage basis under Title I, rather than a common-carriage basis under Title II.⁵ *Second*, the Commission should forbear from imposing such Title II common-carrier requirements as might otherwise apply to broadband. In particular, the Commission should eliminate any requirement to file tariffs, forbear from any requirement under section 201 that rates for broadband services be justified in terms of the cost of providing service, and waive or forbear from any *Computer II/III* rules for broadband services provided by telephone companies, just as it has done for cable companies. Doing so will promote the continued development of the broadband market – and, ultimately, the video services markets as well – on a competitive basis. *See* Verizon Comments at 7-10.

II. THE FCC SHOULD ENCOURAGE STATE AND LOCAL AUTHORITIES TO REFORM THEIR RULES TO ELIMINATE OBSTACLES TO THE RAPID DEPLOYMENT OF COMPETITIVE VIDEO OFFERINGS

Competitive deployment of video services would be faster and more efficient if states and localities would streamline the franchising process. The months or even years of delay and unnecessary costs that the franchising process often entails can discourage overbuilders. *See, e.g.,* RCN Comments at 3 (“RCN pulled out of markets, including Seattle, Portland, and parts of southern California, where it had taken too long to negotiate viable franchise and rights-of-way

⁵ Declaratory Ruling and Notice of Proposed Rulemaking, *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, 17 FCC Rcd 4798, 4830-31, ¶ 55 (2002) (“*Cable Modem Declaratory Ruling*”) (noting that, to the extent that cable providers “elect to provide pure telecommunications to selected clients with whom they deal on an individualized basis, we would expect their offerings to be private carrier service”), *aff’d in part and vacated in part on other grounds sub nom. Brand X Internet Servs. v. FCC*, 345 F.3d 1120 (9th Cir. 2003).

access agreements with local municipalities.”). So-called “level playing field” statutes and similar laws that impose undue costs on new entrants similarly operate to discourage entry. Verizon Comments at 12-13.

Similarly, idiosyncratic customer service requirements in different localities make it difficult to operate a uniform national network, forcing companies to choose between the inefficiencies of operating different processes and systems in different localities, or incurring the extra expense of implementing each locality’s peculiar standards throughout the entire network. Localities should be encouraged to adopt the customer service standards that the Commission has promulgated in 47 C.F.R. § 76.309, rather than to create a patchwork of potentially contradictory requirements. *Id.* at 14-16.

III. THE “TERRESTRIAL LOOPHOLE” IN THE COMMISSION’S PROGRAM ACCESS RULES HAMPER EFFECTIVE COMPETITION IN VIDEO SERVICES

The Commission’s program access rules play a vital role in ensuring that vertically integrated programmers do not impede competition by preventing unaffiliated distributors from accessing their programming. Although the Commission has recognized that “terrestrial distribution of programming could have a substantial impact on the ability of competitive MVPDs to compete in the MVPD market,” the Commission has declined to extend the program access rules to cover terrestrially distributed programming.⁶ Many commenters correctly observe that this terrestrial loophole in the Commission’s program access rules leaves new entrants at a serious disadvantage when competing against incumbent cable companies, and that withholding programming under the loophole is becoming an increasingly problematic barrier to

⁶ Report and Order, *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, et al.*, 17 FCC Rcd 12124, 12158, ¶ 73 (2002).

entry. *See, e.g.*, DIRECTV Comments at 4-5; EchoStar Comments at 11-12; NATOA/ACM Comments at 19-23; RCN Comments at 9-10; SBCA Comments at 18; Verizon Comments at 16-17. The problem is especially acute for regional sports programming, with, for instance, Comcast in Philadelphia and Cox in San Diego exploiting the terrestrial loophole to withhold valued sports coverage from competitors. *See, e.g.*, DIRECTV Comments at 18-23; New Jersey BPU Comments at 43. Accordingly, the Commission should take steps to close this loophole, through a new rulemaking if necessary, or should encourage the Congress to do so.

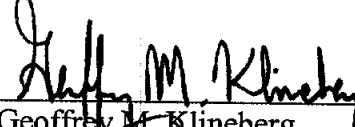
IV. THE COMMISSION SHOULD SUPPORT THE USE OF OPEN STANDARDS THAT DO NOT FAVOR ANY PARTICULAR TECHNOLOGY OR INDUSTRY GROUP

The Commission should adopt technology-neutral standards rather than cable-centric ones (like DOCSIS 2.0) to ensure that FTTP and other modes of video services delivery can emerge and compete with traditional cable technology. Content protection and encoding rules developed by the cable industry should not be forced on all providers of video services. *See, e.g.*, SBCA Comments at 16-17 (“Consumer choice should not be infringed by a . . . deal between electronic manufacturers and cable providers.”). The Commission should also clarify that cable systems that rely on FTTP architecture shall not be considered digital cable systems for purposes of section 76.640 of the Commission’s rules – or it should modify the technical standards and support obligations to take into account fiber architectures and technologies other than those traditionally deployed by cable companies. *See* Verizon Comments at 17-20.

Respectfully submitted,

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ATTACHMENT A

THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc.:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Midwest Incorporated d/b/a Verizon Midwest
GTE Southwest Incorporated d/b/a Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.